

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 2407 - HB 2569

March 15, 2012

SUMMARY OF BILL: Adds hospitals, hospital administrators or designees, pharmacists, pharmacies, and any other health care practitioners with authority to dispense controlled substances to the list of people and entities required to report to law enforcement agencies actual knowledge of doctor shopping behavior. Grants civil immunity to hospitals, administrators, or designees that report such behavior. Adds dentists, optometrists, podiatrists, veterinarians, physician assistants, hospitals, hospital administrators or designees, pharmacies, and pharmacists to the list of providers to which any person obtaining a controlled substance or a prescription for a controlled substance is required to disclose that either the same controlled substance or prescription or a controlled substance of similar therapeutic use or prescription for a controlled substance of similar therapeutic use was received from another practitioner within the previous 30 days. Adds the same persons and entities to the list of providers to which disclosure is required if the person used TennCare to pay for either the clinical visit or for payment of the controlled substances.

Requires any nonresidential substitution-based treatment centers for opiate addiction or health care providers in such treatment centers to query the controlled substance database prior to prescribing or dispensing controlled substances to check the prescription history of a patient seeking a prescription for such substances. Authorizes licensed pharmacists and state and federal law enforcement personnel to have real-time electronic access to the database. Permits authorized federal law enforcement personnel to access the database without the necessity of obtaining a search warrant. Requires pharmacies and pharmacists to, prior to dispensing a controlled substance to a person, obtain photo identification or other means of identification from any person not known to the pharmacist and to require that person to sign a log indicating the person's driver license number or government-issued identification number.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$4,300/One-Time
\$58,300/Recurring
\$9,500/Incarceration***

Assumptions:

- According to the Department of Health, federal law enforcement personnel have access to the controlled substance database only by subpoena. This bill would provide them

with the same password access that only state law enforcement personnel are permitted to have under present law.

- Currently there are 217 state law enforcement personnel registered as users. In the last 6 months of 2011, 513 reports were requested by law enforcement personnel registered with the system. The Department estimates that the number of law enforcement personnel and the number of requested reports will double as a result of adding access to the database for federal law enforcement personnel.
- The Department will hire a Statistician 2 to handle this increase in registration requests from law enforcement personnel.
- The recurring increase in state expenditures associated with this position will be \$58,346 (\$33,437 salary + \$10,909 benefits and insurance + \$7,900 administrative support services + \$4,100 office lease + \$1,400 communications + \$600 supplies).
- The one-time increase in state expenditures will be \$4,300 (\$2,700 office set-up + \$1,600 computer).
- The expected increase in the number of reports that result from the inclusion of federal law enforcement personnel, as well as the proposed requirement of nonresidential substitution-based treatment centers to query the database prior to writing a controlled substance prescription for their patients, will result in a not significant increase in state expenditures for hosting the database by the state's vendor.
- Any increase in expenditures for the boards that regulate and license prescribers and dispensers to accommodate additional disciplinary cases will be not significant and can be accommodated within existing resources of the affected boards.
- Any rulemaking required by this bill will be accomplished during regularly scheduled boards meetings and can be accommodated within existing budgetary resources.
- Pursuant to Tenn. Code Ann. § 4-3-1011, all health-related boards are required to be self-supporting over a two-year period. As of June 30, 2011, the Division of Health Related Boards had a cumulative balance of \$10,859,982.82.
- Under current law, failure to disclose information regarding controlled substances received in the previous 30 days is punishable as a Class A misdemeanor. If such substances were paid for using TennCare, the failure is punishable as a Class E felony. Increasing the number of additional providers to whom a patient is required to disclose such information will not result in a sufficient number of misdemeanor prosecutions for state or local governments to experience any significant increase in revenue or expenditures.
- The Department of Correction (DOC) estimates one person every three years will receive a Class E felony as a result of this bill.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period. The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one Class E offender every three years.
- According to DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36. The average post-conviction time served for a Class E felony is 1.28 years (467.52 days) at a cost of \$28,687.03 (\$61.36 x 467.52 days). The annualized cost per offender is \$9,466.72 (0.33 annual number of convictions x \$28,687.03)

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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